

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

BRIGHT DATA LTD.,	§	
<i>Plaintiff,</i>	§	
v.	§	
TESO LT, UAB d/b/a OXYLABS, UAB,	§	Case. No. 6:23-cv-00055-ADA-DTG
<i>Defendant.</i>		
	§	

DECLARATION OF TOMAS MONTVILAS

I, Tomas Montvilas, declare as follows:

1. I am the Chief Commercial Officer (“CCO”) of Defendant Teso LT, UAB n/k/a Oxylabs, UAB (“Oxylabs”).
2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.
3. Oxylabs is a market-leading proxy and web scraping solution service for large-scale public data gathering, driven by high business standards and innovations. Oxylabs’ products include residential and data center proxies and web-scraping APIs. Oxylabs entered the proxy market in 2013 and Oxylabs is Bright Data’s (f/k/a “Luminati”) largest competitor in the marketplace of network proxy solutions. Today, Oxylabs provides access to the widest possible selection of proxies located in most countries and cities around the world.
4. As a trusted and skilled data gathering company, Oxylabs partnered with various university researchers on projects aiming to tackle COVID-19 tracking. Partners included representatives of

Stanford University, the University of Virginia, and Virginia Tech, as well as Lugano University in Switzerland.

5. Data collection tools are sophisticated tools which permit companies and individuals to access and use data available on the world wide web. Scraping API is one of the newest methods of facilitating data retrieval and interpretation. It is a combination of two phenomena: data scraping and API.

6. Web scraping refers to the process of collecting large amounts of public data from across the internet. For example, certain websites that sell plane tickets from many different providers scrape the data from various websites once a request is made. This allows businesses and customers to compare market prices and make more informed decisions. Generally, most common use cases of proxy solutions include pricing intelligence, market research, ad intelligence and monitoring, etc.

7. One problem with web scraping is that IP addresses often get blocked from performing an extensive number of searches because they get identified as bots. This is where proxies can come in. Proxies provide alternative IP addresses that help overcome such blocks and allow for the collection of as much public data as needed.

8. "API" stands for Application Programming Interface. A scraping API is a data extraction tool designed for specific websites, databases, or programs. Its goal is to provide valuable and structured data to people and eliminate the need for individual research and data scraping. Instead of manually searching for each piece of information, a scraping API automates the process, and thousands of requests can be narrowed down to one, saving valuable time. A scraping API, unlike regular web scraping, filters out unnecessary data and provides the user only relevant data in a structured and legible format. Because of the simplicity of data retrieval and

interpretation, decisionmakers can make highly informed decisions and grow their competitive edge.

9. The product at issue in this case is a proxy network solution developed by Oxylabs called Web Unblocker, and is used exclusively by corporate entities—usually software engineers at such entities ***who are being blocked from a given website*** due to geographic restrictions, known as “geo-blocking.”

10. Geoblocking is the act of completely blocking or limiting access to internet content based on the physical location of the user. In a geo-blocking scheme, the user’s location is determined using Internet geolocation techniques, such as checking the user’s IP address against a blacklist or whitelist, GPS queries in the case of a mobile device, and measuring the end-to-end delay of a network connection to estimate the physical location of the user. The result of this check is used to determine whether the system will approve or deny access to the website or to particular content. The geolocation may also be used to modify the content provided, for example, the currency in which goods are quoted, the price or the range of goods that are available, and other aspects.

11. Geoblocking is not the only reason access to websites are limited or blocked. Other common reasons for blocking include too frequent usage of an IP address or blocking corporate IPs as such. Generally, in web scraping parlance, “blocker” is used as a generic term to refer to issues of accessing a website. These issues can include IP Address Blocks, DNS restrictions, and more. IP address blocking or IP banning is a configuration of a network service that blocks requests from hosts with certain IP addresses. IP address blocking is commonly used to protect against brute force attacks and to prevent access by a disruptive address. See https://en.wikipedia.org/wiki/IP_address_blocking#:~:text=IP%20address%20blocking%20or%20IP,access%20by%20a%20disruptive%20address. A true and correct copy of a screen shot from

this website is attached to the Defendant's Opposition to Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction as Exhibit A.

12. Software tools that use a proxy solution to allow access to restricted websites (geographically based or otherwise) are plentiful, and ***the companies offering those products routinely refer to them as “unlocking” or “unblocking” software***. As PC Mag's online dictionary makes clear, the term “unlock” in this context means: “To get around some form of access restriction. For example, governments may block websites in foreign countries. Video streaming services may block subscribers from another country. Mobile devices may restrict users from administrator-level access.” <https://www.pcmag.com/encyclopedia/term/unblock>; see also: <https://www.merriam-webster.com/dictionary/unblock> (including recent example of use as “Panda VPN offers a free plan, which is great for those who are just looking to stream casually or unblock a site here and there. —Dallas News, 10 Nov. 2022”). True and correct copies of the relevant portions of these websites are attached to Defendant's Opposition to Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction as Exhibit B.

13. Due to the common nature of blocks on websites, it should be no surprise that there are many tools, strategies, and open-source solutions to “unlock” websites to permit access to websites with the topic of “unblocking” and / or “unlocking” being discussed frequently. See, e.g., <https://www.91mobiles.com/hub/best-free-proxy-websites-for-anonymous-browsing/>; <https://unblock-websites.com/>; <https://github.com/web-unblocker> (an open source solution); <https://www.bestproxyreviews.com/unblocker/>; <https://earthweb.com/how-to-unblock-websites/>; <https://geekflare.com/bright-data-web-unlocker> (article refers to “web unlockers” as a generic class of tools for web-scraping: “A web unlocker helps internet researchers, data scrapers, digital marketers, and other professionals access blocked websites for research purposes.” And it discusses the advantages and features of “web unlockers” as a generic class of tools.) /; 10 Tips For Web Scraping Without Getting Blocked/Blacklisted: <https://www.scrapaperapi.com/blog/10-tips->

for-web-scraping/; Web scraping without getting blocked: <https://www.geeksforgeeks.org/web-scraping-without-getting-blocked/>; Unlock the power of data at scale without the hassle of getting blocked with zenscrape's web scraping API: <https://zenscrape.com>; <https://phreesite.com/website-unblockers/> lists all the different sort of products for web unblocking; Zyte offers an API that claims to permit users to "never get blocked again": www.zyte.com; and Avast offers VPN services to "unlock websites at school, home, or work": <https://www.avast.com/c-how-to-unblock-websites-with-vpn>. True and correct copies of the relevant portions of these websites are attached to Defendant's Opposition to Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction as Exhibit C.

14. Indeed, as Geekflare makes clear, the terms "web unlocker" and "web unblocker" are generic industry terms. At <https://geekflare.com/bright-data-web-unlocker>, Geekflare explains "What is a Web Unlocker?" as "A web unlocker helps internet researchers, data scrapers, digital marketers, and other professionals access blocked websites for research purposes. Accessing public web data is legal according to various rulings in the US and EU courts. Hence, software and website developers started working on solutions to bypass blockages that are here to stay. Such solutions use many technologies like VPNs, Proxy IPs, IP rotations, automatic Captcha, and more. The ultimate target is allowing user agents, APIs, automated data scraping protocols, etc., unrestricted access to interesting public data." Geekflare proceeds to explain the "advantages," and "features" of "web unlockers" in detail before considering the features of Bright Data's web unlocker. Attached to Defendant's Opposition to Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction as Exhibit D is a true and correct copy of the entire article posted by Geekflare.

15. Videos and materials are also freely available explaining how to unblock websites:

- <https://kinsta.com/blog/unblock-websites/>

- [https://www.youtube.com/watch?v=_38lbotPIQE](https://www.youtube.com/watch?v=_38lbotPIQE;);
- <https://www.xbyte.io/web-unlocker-empower-on-demand-data-revolution-to-help-companies-deliver-industry-leading-results.php>;
- <https://dataunlocker.com/docs/general/concepts/>;
- <https://www.webscrapingapi.com/how-to-use-node-unblocker-in-web-scraping-for-improved-results>;<https://chrome.google.com/webstore/detail/unblock-a-website/hgchgdffelliaigmoclcefcabaoipgonc?hl=en>; and
- Octoparse YouTube video explaining how to stop blocking whilst scraping: <https://www.youtube.com/watch?v=B4VPmdtel5A>.

True and correct copies of the relevant portions of these websites are attached to Defendant's Opposition to Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction as Exhibit E.

16. Due to the generic nature of the term "unblocker" in the context of accessing websites for various reasons, including web scraping, many companies offer tools to "unblock" websites including the term "unblocker" as part of the name of the tool, including, for example:

- Hola VPN offers a "Website Unblocker." See <https://chrome.google.com/webstore/detail/hola-vpn-the-website-unblocker/gkojfhkheighikafcpjkiklfbnlmeio> (To view, cut and paste into a browser.)
- Node offers a "node unblocker." See <https://www.webscrapingapi.com/node-unblocker>.

- Various Chrome extensions for unblocking websites, e.g.:
<https://chrome.google.com/webstore/detail/unblock-a-web-site/hgchgdfeelliaigmoclcefcabaoipgonc?hl=en>

True and correct copies of screenshots from the relevant portion of each of these referenced websites are attached to Defendant's Opposition to Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction as Exhibit F.

17. Oxylabs generally sells its products, including its Web Unblocker product, to medium and large companies located around the world. Unlike many of its competitors, Oxylabs does not market its products to individuals or offer a self-purchase option. Instead, Oxylabs' customers for the Web Unblocker product are corporate entities whose employees may access the software potentially after an initial free trial only when the corporation signs a contract for its use and undergoes a Know-Your-Customer ("KYC") procedure, which helps to reduce fraud and illegal use of the software.

18. KYC is a set of processes that allow companies to confirm the identity of the organizations and individuals they do business with, and ensures those entities are acting legally. Prospective clients reach out to Oxylabs and provide Oxylabs with a list of required information before they can have access to certain of Oxylabs' products or services. The information includes: Company name; Company address; Company activities; Phone number; E-mail address; Usage information; Planned use cases; Methodology of use; and any other information Oxylabs needs to assess whether it will accept the company as a customer. Each year at least a quarter of all customer enquiries are rejected due to not conforming to Oxylabs' policies and standards. After becoming an Oxylabs customer, Oxylabs' compliance team reviews the customer's activity on a regular basis. Internal systems monitor for any suspicious behavior to prevent a potential breach of Oxylabs' policies and terms and conditions. Oxylabs also employs an abuse report system

allowing external parties to report suspicious activity directly to Oxylabs. More details regarding Oxylabs' KYC procedures can be found at <https://oxylabs.io/kyc-and-safety>.

19. The wide array of products Oxylabs offers is described at <https://oxylabs.io/products>. As the product listing makes clear, the products are generally identified in such a way to describe to consumers the function or feature of each product:

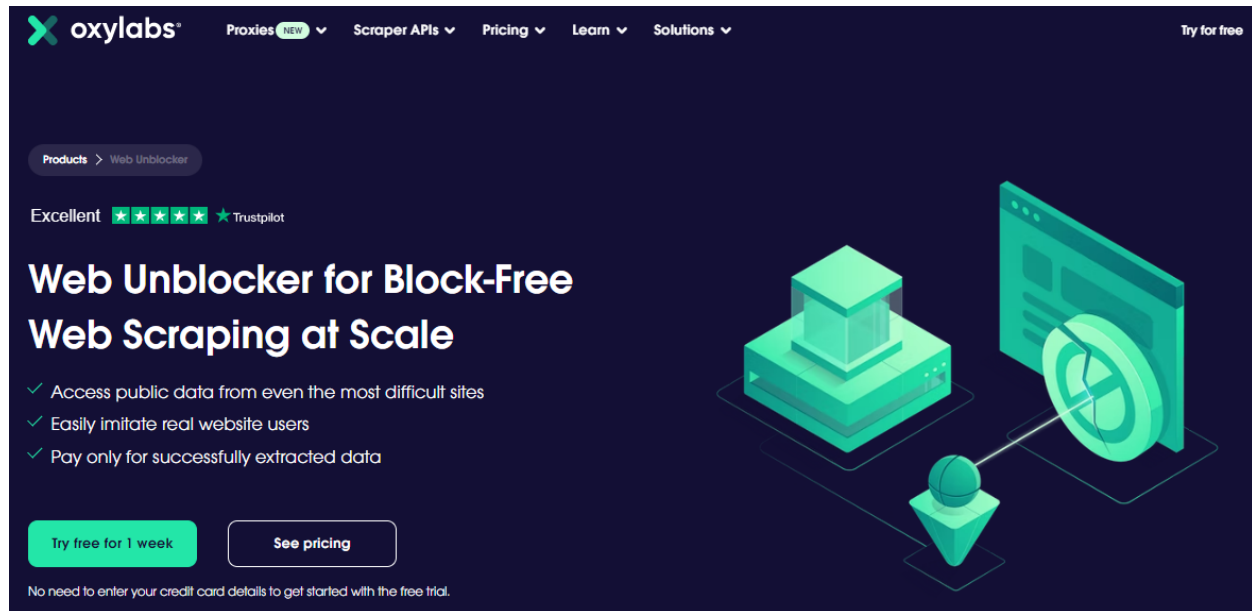
Oxylabs' Top Products
Market-leading web scraping solutions for large-scale public data gathering

Proxies	Scraper APIs
<p>Dedicated Datacenter Proxies The highest performing proxies on the market <i>Best for:</i> cybersecurity, market research, brand protection, email protection.</p>	<p>SERP Scraper API Scalable SERP data delivery from major search engines <i>Best for:</i> SEO & keyword monitoring, intellectual property protection.</p>
<p>Shared Datacenter Proxies Fast and reliable proxies for cost-efficient scraping <i>Best for:</i> price monitoring, review monitoring, market research.</p>	<p>E-Commerce Scraper API Enterprise-level data from most e-commerce websites <i>Best for:</i> price monitoring, competitor analysis, review monitoring.</p>
<p>Residential Proxies Human-like scraping without IP blocking <i>Best for:</i> ad verification, load testing, review monitoring.</p>	<p>Real Estate Scraper API Real-time property data from popular real estate websites <i>Best for:</i> researching new investments, price optimization, trend discovery.</p>
<p>Web Unblocker NEW AI-powered proxy solution to bypass advanced anti-bot systems <i>Best for:</i> real estate scraping, travel fare aggregation.</p>	<p>Web Scraper API Public data delivery from a majority of websites <i>Best for:</i> market research, sentiment analysis, brand protection.</p>

A true and correct copy of the relevant portion of the website is attached to Defendant's Opposition to Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction as Exhibit G.

20. Oxylabs rebranded its "Next-Gen Residential Proxies" product as Web Unblocker in January 2023. The name Web Unblocker was selected to directly describe the ability of Oxylabs' tool to unblock access to websites. In this way, Oxylabs can directly advise prospective consumers of

the key feature of the product—*i.e.*, to unblock websites. Oxylabs consistently uses the terms “unblock” and “unblocking” to describe Oxylabs’ Web Unblocker on that portion of its website devoted to describing the features of the Web Unblocker product and the prices at which the product is offered. There, under the clear source banner of Oxylabs at the top of the screen, a customer can learn more about Oxylabs’ “Web Unblocker for Block-Free Web Scraping at Scale”:



Scrolling further down the product page the prospective customer can learn more about the Web Unblocker product features. Oxylabs there again confirms, in oversized font, the functional nature of the Web Unblocker product:

**Never get blocked again when web
scraping**

Try free for 1 week


And:

**Unlock valuable public data from any
website**

Try free for 1 week

(See <https://oxylabs.io/products/web-unblocker>). As the prospective customer reviews the information about the Oxylabs Web Unblocker, the Oxylabs banner remains in place at the top of the page.

21. As part of the product page for Oxylabs' Web Unblocker product, Oxylabs does include various illustrations regarding the features of the Web Unblocker product, for example:



Proxies NEW

Scraper APIs

Pricing

Learn

Solutions

Try for free

Web Unblocker vs. self-managed proxies

	Self-managed proxies	Web Unblocker
Integration method	Backconnect proxy or direct connection	Backconnect proxy
Worldwide geotargeting	Country or city-level	Country, city or coordinate-level
Automated unblocking	×	✓
CAPTCHA bypass	×	✓
JavaScript rendering	×	✓
Full proxy management	×	✓
Advanced browser fingerprinting	×	✓
Auto-retry	×	✓

However, the illustrations appear as part of a stream of information available to a prospective customer as he or she scrolls from the start of the product page to the end of the product page. The illustrations always appear with the Oxylabs banner at the top of the page throughout the scrolling process.


22. These types of illustrations are not unique to Bright Data or to Oxylabs. These types of illustrations are used throughout the industry to describe in visual manner the features of the products being offered for sale. Examples of other companies using illustrations which either

appear similar to those offered by Bright Data or Oxylabs, or which provide the same information in an illustrative form include:

- IP Idea provides a very similar table of functionalities to promote its Webpage Unlocker product alongside a key symbol: <https://www.ipidea.net/solution-super/>.
- Crawlbase, Nimbleway, and Xbyte use illustrations to convey the same information and/or message about their respective proxy products: <https://crawlbase.com/scraping-worldwide-smart-proxy>, <https://www.nimbleway.com/nimble-browser/>, and <https://www.xbyte.io/web-unlocker-empower-on-demand-data-revolution-to-help-companies-deliver-industry-leading-results.php>. ***Note that the Xybte product name is Web Unlocker.***
- And Scraping Bee provides information on features in a similar manner as both Bright Data and Oxylabs for its tool against getting blocked: <https://www.scrapingbee.com/?fpr=proxy64>.

True and correct copies of the relevant portions of each of these websites are attached Defendant's Opposition to Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction as Exhibit H.

23. The Oxylabs Web Unblocker product is not an impulse purchase as it may be considered to be an expensive product. Pricing is offered on a scaled basis:



Proxies NEW ▾Scraper APIs ▾Pricing ▾Learn ▾Solutions ▾

Try for free

Pricing

✓ Access public data from difficult sites

✓ Imitate real website users

✓ Pay only for successful results

Don't miss out

Free Trial

\$0

1 week trial

Limited to one user

Start free trial

		Starter	Business	Corporate	Enterprise
		\$325/mo	\$660/mo	\$1,000/mo	Starts from: \$6,000/mo
		\$13 / GB	\$11 / GB	\$10 / GB	Custom price per GB
		\$325 + VAT billed monthly	\$660 + VAT billed monthly	\$1000 + VAT billed monthly	
		Contact sales	Contact sales	Contact sales	Contact sales
Traffic	1 GB	25GB	60GB	100GB	1 TB+
Coordinate-level targeting	✓	✓	✓	✓	✓
24/7 support	✓	✓	✓	✓	✓
Dashboard access	—	✓	✓	✓	✓
Dedicated Account Manager	—	—	✓	✓	✓

(See <https://oxylabs.io/products/web-unblocker>)

24. As the pricing information display makes clear, the product cannot simply be purchased without interaction with an Oxylabs’ salesperson. While a free one-week limited trial experience is available to prospective customers, a prospective customer looking to purchase access to Oxylabs’ Web Unblocker must confer with an Oxylabs salesperson to make use of Oxylabs’ Web Unblocker. At the end of this process, the prospective customer will begin the KYC process and, if cleared, may enter into a contract with Oxylabs.

25. Purchasers of Oxylabs’ products, including the Oxylabs Web Unblocker tool, are sophisticated. Typically, we work with software engineers who are seeking solutions that will allow access to websites that are blocking them. The software engineers are proficient in web

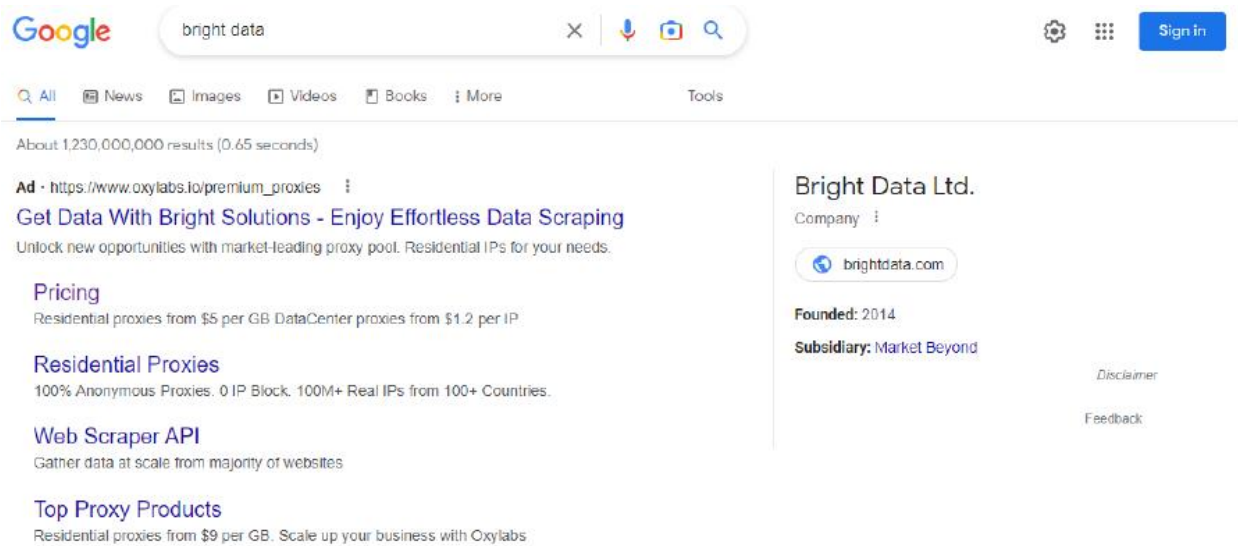
13

scraping and have experienced issues with access being blocked for websites of interest to their companies. With the guidance of these engineers, our corporate clients usually pick one or two vendors to assist with their web unblocking needs after their internal procurement process. In my experience, our corporate clients conduct detailed tests, due-diligence investigations into prospective vendors, engage in price-comparison studies, and discuss with the vendors their products and their features before making any purchasing decisions. At the present time, Oxylabs offers the Web Unblocker product only to corporate clients and it cannot be sold through self-purchase channels.

26. I am aware of the Bright Data Web Unlocker product. I am not aware of any actual confusion arising from Oxylabs' use of Web Unblocker. This is not surprising due to the generic or highly descriptive nature of the terms employed by Oxylabs and the common use of those terms throughout the proxy server and web-scraping industry. Further, the Web Unblocker product is sold only through an Oxylabs salesperson and only after the negotiation and execution of a contract between Oxylabs and the customer, typically after the prospective customer has requested a free trial of the Web Unblocker to test the product solution before making any purchase decision. And, of course, as part of the subscription process, the prospective customer must clear the Oxylabs KYC process. Finally, Oxylabs and Bright Data are the largest and the most-well known providers in the marketplace of network proxy solutions. It is a specific industry where customers are particularly familiar with the market and available solutions of public-data collection. There is no question that prospective and actual customers of Oxylabs know that they are dealing with Oxylabs when considering the Web Unblocker product to enhance their web-scraping capabilities and results.

27. Oxylabs does not use BRIGHT DATA to promote any of Oxylabs' products. The phrase "bright data" does not appear, to my knowledge, anywhere on the Oxylabs website with respect to product marketing to promote any of Oxylabs' products. Oxylabs does promote its products

largely online with its website and through Google and other search engines. In doing so, Oxylabs purchases keywords and pays, Google for example, to have an advertisement appear in response to certain search terms at, or near, the top of the search results presented by the Google algorithm to the user. The following screenshot shows one of the examples of such an advertisement:



The advertisement is labelled as an “Ad” and includes the sponsored company address: www.oxylabs.io. The advertisement does not make use of the Bright Data name or trademark. Oxylabs has paid for this advertisement, with changes to the text over the course of time, **since March 2021 without any complaint.**

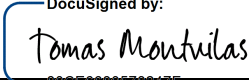
28. I am not aware of any actual confusion arising from the use the words “bright,” “bright solutions,” or “data” in Oxylabs’ Google advertisement. If such confusion were happening, I would expect, due to my role at Oxylabs, that the issue would have come to my attention.

29. The Google advertisement has only generated approximately 11K clicks to the Oxylabs homepage since it first launched in March 2021 through February 1, 2023. Of these 11K visits, approximately 550 companies became leads for future business, but not necessarily a customer of Oxylabs. To put this volume in context, Oxylabs’ website has had more than 3.2 million visits

during this same period without accessing the website through any paid advertisement. Total paid and unpaid web traffic for the Web Unblocker landing page has been roughly 5,000 visits.

30. The word “bright” in the Google advertisement is intended to convey to prospective consumers that the solution offered by Oxylabs is a smart or bright one for unblocking access to data on websites. The illustration of a light in the advertisement underscores how the solution shines light on data which was not previously accessible. As the purposes of any web scraper is to secure data from a targeted website, the Oxylabs advertisement makes use of the term “data” to promote its tool which unblocks access to data which was previously unavailable.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on February 6, 2023.

DocuSigned by:

Signature: _____
00CE0000576247F...
Printed name: Tomas Montvilas
